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NSW Australia: Complexity, intricacy and creativity**

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## The three phases of Local Government State of Environment reports in NSW Australia: Complexity, intricacy and creativity

### Abstract

This paper explores the three phases of State of Environment Reports (SoERs) prepared by local councils in NSW since the introduction of the Local Government Act 1993 (NSW), which heralded significant change to local government's powers, functions and requirements. NSW is the only Australian jurisdiction where local SoERs are required. The first phase was responsive to environmental concerns but provided considerable confusion. The second was more ambitious and complex. The current phase provides considerable flexibility. This article leads to questions such as whether the SoER should be enveloped into the new 'Community Strategic Plan' or stand alone as a separate management tool.

### Keywords

three, phases, Local, Government, State, Environment, reports, NSW, Australia, Complexity, intricacy, creativity

### Disciplines

Law

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## Introduction

In the mid-1990s, Sproats (1995, p. 1) detected an 'absence of widespread debate' on Australian local government (see also Dore, 1998). Shortly afterwards, Doyle and Kellow (1995, p. 179) observed inadequate investigation 'of the role of local governments in the development and implementation of environmental policy'. Almost fifteen years later, Pini (2009, p. 184) lamented that 'literature evaluating local government environmental progress in Australia is clearly scant'. Shortly beforehand, Pini et al. (2007) referred to a research emphasis on urban councils rather than natural resources management by rural authorities. Notwithstanding these observations, a surge of nature conservation officers joined local government's ranks throughout the 1990s and beyond (Keen, Mercer and Woodfull, 1994; Westcott, 1992; TASQUE, 1992). This brand of specialist staff arose from community and political demands, partly influenced by international agreements such as (i) the *Rio Declaration on Environment and Development* and (ii) *Agenda 21* which accommodated *Local Agenda 21* (see former cl 28.2). Key local documents also played a prominent role, including the *National Local Government Biodiversity Strategy* (Australian Local Government Association and Biological Diversity Advisory Council, 1999) and the *Biodiversity Planning Guide for NSW Local Government* (Fallding, et al., 2001). Moreover, application of modern environmental statutes warranted the need for professional expertise at the forefront. All these and other influences have inspired closer attention to managing local environments under the broad umbrella of 'ecologically sustainable development' (ESD), the 'second wave' of modern environmentalism (Beder, 1993, p 18)<sup>1</sup>.

In response to the above and other factors, many councils have prepared or are undertaking their own local environmental strategies and the like, either individually or on a regional scale, where ideas might be raised by the elected representatives, staff and/or local citizens. In practice, this does not extend to every council. As noted by Daly (2000, p. 201), rural authorities suffer from 'limited capabilities' with insufficient funding and expertise to address localities facing 'severe environmental challenges' (see also Thomas, 2010; Pini et al., 2007). Urban councils must also juggle separate demands from the community whilst following state law and policy. Local government's financial paucity, as demonstrated by recent reports (FiscalStar Services Pty Ltd, 2008; Allan, 2006; PriceWaterhouseCoopers, 2006), continues to stifle environmental and other

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<sup>1</sup> The commonly used statutory definition of ESD in NSW is located in the *Protection of the Environment Administration Act 1991* (NSW), section 6(2).

activities (see also Bates and Meares, 2010; Thomas, 2010; Pini et al., 2007; Dollery et al., 2006; Kelly and Stoianoff, 2006; Dollery, 2005, Wild River, 2003). This article aims to add to the growing scholarship on Australian local government by exploring a specific topic: i.e. council 'State of Environment Reports' (SoERs) in NSW. This mechanism, as will be seen, is demanded by statute. At present there should be 252 council SoERs across NSW. While limited but valuable scholarly attention has been paid to local SoERs (see notably Mladenovic and van der Laan, 2007; Brown et al., 1998), this paper explores the three legislative stages of council SoERs. The context is a political-legal critique, leading to questions regarding lessons from the past and ideas for the future. Its flavour relates to the natural environment.

Of course, the SoER concept is scarcely restricted to local government (Harding and Traynor, 2003; Lloyd, 1996). Measures were adopted on a global basis in the mid-1990s by the Organisation for Economic Co-operation and Development (OECD) to address environmental concerns on a 'pressure-state-response' model (Williams, 2007). A series of national SoERs for Australia commenced in 1996, now demanded by Commonwealth legislation. Adoption of SoER obligations by individual state/territorial jurisdictions has also arisen, pushed by several of the six states in addition to the Australian Capital Territory. Crucially, NSW is the only state where local government *must* prepare its own SoER (Pini, 2009; Harding and Traynor, 2003). This places any council that is struggling financially in an invidious position.

## The Legislative Framework

The NSW local government landscape underwent dramatic change in 1993 upon commencement of the *Local Government Act 1993* (NSW) (LGA, 1993). In similar fashion to other Australian jurisdictions, the statute enables a council to carry out *any* service function it chooses, provided it is lawful. For example, a council may decide to plant or replace trees on street verges or reinvent the architecture of its civic square. Previously, under the long-lasting *Local Government Act 1919* (NSW) (LGA, 1919), which replaced the archaic *Local Government Act 1906* under which the majority of NSW became incorporated<sup>2</sup>, a council had to rely on an express or implied provision to support a particular

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<sup>2</sup> The incorporation of NSW in 1906 excluded the Western Division apart from several townships such as Broken Hill and Wilcannia. The unincorporated lands then comprised about 40 per cent of the NSW land area. A large sector of the Western Division was incorporated during the late 1950s through the creation of new councils and the extension of existing shires.

service. For instance, many community services were unlawful until 1983 when the NSW Parliament inserted former section 498A into the LGA 1919 stating that councils 'shall be deemed always to have had power to provide community welfare services'. Clearly, members of the local community were undisturbed by – or unaware of – the unlawfulness of such valuable and appreciated local services. This and other statutory jigsaw pieces became needless due to section 24 LGA 1993, which reads that a 'council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public, subject to this Act, the regulations and any other law' (see also former ss 21-23A). This centrepiece of the LGA 1993 removed Purdie's earlier concern about functional suffocation by the 'spectre of *ultra vires*' (1976, p. 151; see also Aulich, 1999; Smith, 1998).

In addition to service functions, a council must implement its regulatory powers, such as assessing and determining land use applications and managing community land (i.e. council-managed active or passive open space). Various demands arise not only from the LGA 1993 but also the *Environmental Planning and Assessment Act 1979* (NSW), the *Threatened Species Conservation Act 1995* (NSW) and an entanglement of other enactments and delegated legislation. In addition, there are legislative requirements to prepare an array of specific documents, such as Annual Reports and statements by councillors to their general managers on disclosures of interest. The chief example here is the SoER, introduced in 1993 by the LGA 1993. Attention must also be paid to the former 'Management Plan' which was also the product of the LGA 1993. The Management Plan played a substantial role which opened the door to new integrative approaches and potential linkages with the SoER. But unlike the SoER, it has been replaced by a cascade of new mechanisms by the *Local Government Amendment (Planning and Reporting) Act 2009* (NSW).

The NSW State Government regarded the Management Plan as the 'central mechanism... by which councils allocate their resources and prioritise their activities' (Department of Local Government (DLG), 1999b, p. 8). Former section 406(1) LGA 1993 required every council to endorse its Management Plan before the end of each year. It was essentially an overall management tool, addressing the council's strategic direction and proposed major activities.

In theory, the management plan was the vehicle through which a council decided, with the benefit of community input, how it intended to exercise its broad service powers conferred by section 24 LGA 1993. Mandatory consultation provisions (former s. 405) together with a requirement that general managers report periodically to their councils on implementation (former s. 407) illustrated public input and accountability. The legislation directed that the Management Plan

contain details about a council's proposed 'principal activities' for, at least, the following three years, together with its 'revenue policy' for the ensuing year. The plan had to identify those 'principal activities' that the council intended to carry out, as well as 'statements' on:

- the objectives and performance targets for each such activity;
- the means by which a council proposes to achieve those targets;
- the manner in which a council proposes to assess its performance in respect of each specified activity; and
- any matters prescribed by regulation (former section 403(1)).

The extent to which the above matters were addressed was erratic. Of the 25 plans studied by Marshall and Sproats in 1997/98, six 'contained no performance indicators at all' (2000, p. 502). Another issue is that 'principal activity' was never defined. Instead, former section 403(2) LGA 1993 laid down a non-exhaustive list of activities that, if carried out, the Management Plan had to address. It referred to traditional functions in broad terms such as 'capital works projects' and 'services'. Whilst some conservation projects such as restoring ecologically damaged parklands might have fallen into one or more of these categories, the provision also made reference to 'activities to properly manage, develop, protect, restore, enhance and conserve the environment in a manner that is consistent with and promotes the principles' of ESD. In accordance with the LGGR, these were known as 'environmental protection activities' (EPAs) (former cl 199(2)). It would appear that the formula was broad enough to extend beyond physical conservation works to activities such as resourcing voluntary conservation groups and providing workshops on establishing back and front yards with locally indigenous plant species. But the legislation did not compel councils to undertake EPAs. It only required councils to detail such activities in the prescribed manner should any be undertaken. It may be argued that the focus was on procedure rather than outcome. On the other hand, the statutory openness reflected the subsidiarity principle: the State Government played no role in approving the Management Plan. The same situation applies to the SoER, which also entered the statutory arena in 1993.

### **SoERs: Phase One – Surprise and Confusion**

Introduction of the obligation for every council to prepare a SoER generated a political bombshell. It was successfully inserted in the 1993 by the then Labor Opposition with the support of independent members. Unsurprisingly, the then Coalition Government was appalled. Mr J. Turner, who had chaired a special

parliamentary committee to oversee development of the bill, warned that the costs would be 'crippling' whilst castigating the move as a 'blatant political stunt' (NSW Legislative Assembly, *Hansard*, 22 April 1993, pp. 1512-13). The then Minister for Local Government, Mr G. Peacocke, quoted foreseen exorbitant costs for preparing SoERs while stressing fierce opposition by the then joint Local Government and Shires associations (NSW Legislative Assembly, *Hansard*, 18 May 1993, 2219). The Local Government Association, despite initial chagrin, later decided to support the SoER but subject only to state government assistance. Unsurprisingly, no general monetary help ever arrived (Ellis-Jones, 2000). The only direct support was guidelines (Environment Protection Authority, 1995). In other words, the SoER requirement was simply dumped upon a largely unprepared local government. This was not a case of simple 'cost shedding' of functions delegated away from state to local government (see, for example, Allan, 2006; PricewaterhouseCoopers, 2006). It comprised a totally new challenge if not an unwanted burden – or perhaps something to be ignored — for financially stressed councils, especially those in rural areas carrying out limited 'housekeeping matters' (Daly, 2000, p. 197)<sup>3</sup>.

The requirement for SoERs fell under the Annual Report mechanism, which is still the case. Former section 28(2)(c) LGA 1993 demanded each SoER to contain the following particulars:

- (i) areas of environmental sensitivity; and
- (ii) important wildlife and habitat corridors; and
- (iii) any unique landscape and vegetation; and
- (iv) development proposals affecting, or likely to affect, community land environmentally sensitive land; and
- (v) polluted areas; and
- (vi) any storage and disposal sites of toxic and hazardous chemicals; and
- (vii) waste management policies; and
- (viii) threatened species and any recovery plans; and
- (ix) any environmental restoration projects; and
- (x) vegetation cover and any instruments or policies related to it, including any instruments relating to tree preservation.

With their lack of clarity and non-existent definitions, such elements must have encouraged misinterpretation and inconsistency (Kelly, 1996, p. 87). For instance, what was meant by 'environmental sensitivity'? When might local

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<sup>3</sup> The term 'housekeeping' tasks may also be found in G Hawker (1975), 'The Australian Government and Local Government: What is Happening?', *Current Affairs Bulletin*, 52, p. 21.

wildlife be 'important'? Does it rely on its rarity or popularity? What about local flora? Was vegetation outside the 'unique' basket to be ignored? And was there any agreement on the meaning of 'unique'? While such issues reflect awkwardly designed law, they at least prompted some local authorities to address their local environments. According to Herrick (1997, p. 30), the idea of the SoER arose from independent parliamentarian Clover Moore in order to make councils 'more environmentally accountable'. Notwithstanding some fierce political criticism against the SoER, some inventive councils went as far as linking their SoERS with their Management Plans (Wood, 1996). But such advancement was uncommon.

A review of the first round of SoERs commissioned by the State Government revealed that most councils saw the process based on information collection rather than influencing local environmental policy (Brown and Greene, 1994). Several years afterwards, the DLG (1997) observed that there had been scant change. This view was confirmed by Brown et al.'s investigation of 20 councils in the Hawkesbury-Nepean catchment where senior managers of half of those councils believed that the SoER was merely an 'audit produced to meet statutory reporting requirements' (1998, p. 8). In some circumstances, councils prepared no SoER at all. For example, in 1995 the former Gundagai Shire Council refused to prepare its SoER due to its belief that relevant environmental matters were already dealt with under other legislation, which it failed to pinpoint (Gundagai Shire Council, 1995/96). It seems surprising that the later Labor Minister for Local Government, Mr Page, had the temerity to suggest in 1997 that the SoER requirements had 'worked well' (NSW Legislative Assembly, *Hansard*, 17 Sep, p. 160). At the same time, he noted that the quality of reports varied widely, an issue that has scarcely disappeared (Pini, 2009; Mladenovic and van der Laan, 2007).

The poor architecture of the statutory provisions was partly assuaged by guidelines provided by the State's then environmental agency (Environmental Protection Authority, 1995, pp. 7-19), which recommended eight 'sectors' to be addressed in the SoER rather than the ten 'themes' in the statute (see former cl 50 Sch 1 LGA 1993). This approach was followed in the second phase.

### **SoERs: Phase Two – Ambitious and Unrealistic**

In 1997, former section 428(2)(c) LGA 1993 was overhauled to require every council to address in its SoER:

- (i) land,
- (ii) air,



- (iii) water,
  - (iv) biodiversity,
  - (v) waste,
  - (vi) noise,
  - (vii) Aboriginal heritage
  - (viii) non-Aboriginal heritage,
- with particular reference, with regard to each such environmental sector, to:
- (ix) management plans relating to the environment,
  - (x) special council projects relating to the environment,
  - (xi) the environmental impact of council activities.

This legislative change arose from the *Local Government Amendment (Ecologically Sustainable Development) Act 1997* which provided, amongst other matters, clearer linkages between SoERs and the Management Plan. Firstly, one of the items listed under former section 403(2) LGA 1993 (in relation to the required 'particulars' for proposed 'principal activities' to be addressed in the Management Plan) referred to 'activities in response to, and to address priorities identified in, the council's current comprehensive report as to the state of the environment and any other relevant reports'. Secondly, the LGA 1993 required each council, when compiling its SoER, to address each of the eight specified 'environmental sectors' in the context of 'management plans relating to the environment' (see former s 428(2)(c)(ix)). This widened the net for all identified principal activities to be assessed against a variety of environmental criteria. The notion was championed by the DLG which recommended an optional 'environmental management plan' (EMP) as a 'sub-plan linked to the management plan' (DLG, 2000, pp. 22, 38-9 and 53). By bringing local environmental problems to the attention of elected representatives, the SoER could influence the types of 'principal activities' (or service functions) that a council may have decided to engage in. In turn, a later SoER may have been utilised to evaluate the environmental outcomes of such actions. In other words, the SoER may have been seen as an *extension* to the management plan process by addressing essential follow-up action. The DLG commended a 'management planning/annual reporting cycle' (DLG, 2000).

The revised provisions failed to ignite immediate change. Senior municipal personnel interviewed by Brown et al. (1998) viewed the SoER exercise as a nuisance carried out to meet statutory demands. Whittaker similarly reported managers complaining of difficulties in interpreting SoERs, with some asserting that they had 'not seen, let alone read [the SoER] for their council' (2000, p. 159). An unpublished survey by the author of nine 1998/1999 SoERs in the NSW

south-western slopes, a region which exhibits 'one of the most poorly ecosystems in Australia' (Prober and Thiele, 1993, p. 13), revealed that three councils were still applying the pre-1997 law (Kelly, 2004). Brown et al.'s findings were especially disturbing as they involved councils at Sydney's periphery with relatively large budgets and, presumably, more in-house environmental expertise than those in remote resource-poor councils. The findings reflect, arguably, managerialist trends emphasising cost-cutting rather than long-term environmental management. But the SoER is a very different mechanism to the traditional budgetary instruments which many traditional council administrative executives would still be familiar with. As Brown et al. (1998, p. 11) noted, the SoER 'has as its central reference point the whole environment... rather than councils' activities in that area'. It deals with big issues, such as biodiversity decline or diffuse pollution on farmlands, which are difficult to reduce to financial returns. A narrow perception of SoERs means a minimal role in shaping local government environmental agendas.

The revised LGA 1993 together with the supporting LGGR and related State policy guidelines (DLG, 1999a; DLG, 2000) urged councils to respond to issues in their SoERs by strategically effective means. In particular, the LGGR required a council, when preparing that part of its Management Plan dealing with EPAs, if any, to 'consider' its most recent comprehensive SoER (former cl 219). This further encouraged the management plan/SoER 'cycle', providing a third potential link between the two mandatory mechanisms. The *National Local Government Biodiversity Survey* reported that a 'high proportion' – more specifically, 45% – of surveyed councils in NSW had 'incorporate[d] biodiversity objectives into their corporate/operational plan' (2000, p. 35). But in view of the statutory linkages with environmental management, the figure is disappointing. It suggested that more than half of the councils had paid minimal, if any, attention to the requirements relating to biodiversity accountability.

The statutory change also demanded that comprehensive SoERs apply the 'pressure-state-response' model in analysing data, identifying appropriate indicators for each sector and presenting results. It therefore corresponded with the OECD model. The 'response' component is especially noteworthy by identifying 'the response of councils, government agencies, industry and communities to the pressures on, and state of the environment' (LGGR former cll 14-15). Not only did the provisions require a council to canvas its own approaches, if any, but those of other bodies. The legislation encouraged a council to adopt the role of environmental steward by considering a full range of issues affecting its area including matters beyond its conventional jurisdiction. A SoER might have, for example, addressed the impact of other authorities' policies

on biodiversity. For instance, it might contain information on management of State-owned reserves that abut local community land. In theory, consideration of such matters may lead to lobbying and/or, better still, development of inter-agency partnerships. In their analysis, however, Mladenovic and van der Laan found a lack of predictive information together with unhelpful 'motherhood-type' comments (2007, p. 87).

The resource-intensive nature of SoER preparation was softened in 1997 by allowing for four-yearly 'comprehensive' SoERs updated by annual 'supplementary' SoERs. The supplementary reports were expected to identify only 'new environmental impacts' and update 'the trends in environmental indicators' (LGGR former cl 37; see also former cll 3, 33, 35, 36 and 38). Again, the language was ambiguous.

In addition to receiving public input on draft management plans, opportunity existed for the community to influence the direction of SoERs. In preparing their SoERs, councils were required to consult with their communities, including 'environmental groups', and also involve people in 'monitoring changes to the environment' (LGGR, former cl 220). But again, there were no details or suggestions on how this was to occur. Brown et al. (1998, pp. 14, 19) found the desired council/community partnership to be 'almost non-existent' amongst the authorities surveyed, with three managers viewing the community as 'irrelevant and/or disinterested'. Such findings are troubling, especially in view of increasing environmental expectations by many local communities. A Commonwealth parliamentary report issued in 2003 had warned councils against entering costly functional territory (House of Representatives Standing Committee on Economics, Finance and Public Administration, 2003, pp. 14-15). In their survey of 2003 SoERs (2007, p. 89), Mladenovic and van der Laan found 'a low proportion of councils... provid[ing] evidence of community involvement in data collection and monitoring'.

There is also the issue that the SoER environmental sectors can transcend municipal borders. For example, retention of native vegetation listed as 'vulnerable' under the *Threatened Species Conservation Act 1995* occupying local parklands may be ill-suited for management on a piecemeal council-by-council basis. This raises the idea of *regional* SoERs. In their early review of early SoERs, Brown and Greene observed that '[m]any issues were... more appropriate for regional or catchment treatment' (1994, p. 23; see also Mladenovic and van der Laan, 2007). As McNeil noted (1997, p. 23) in emphasising the environmental impact of ordinary council functions, there are 'very few [local government] activities where the effects are purely local'.

In an effort to minimise costs for individual member councils, but also in recognition of the sheer common sense in adopting a regional perspective, some voluntary 'regional organisations of councils' (ROCs) or other strategic alliances have promoted regional approaches. In 2000, the Western Sydney Regional Organisation of Councils (WSROC) published its Regional SoER, asserted as 'the first regional [SoER] in Australia... based on sustainability principles' (Parissi, 2003, p. 56). But such an example does not remove the statutory requirement that each council had to prepare its own individual SoER. In the 1997 DLG discussion paper on SoERs, Minister Page acknowledged wide support for regional SoERs but remained steadfast in his commitment to individual SoERs (DLG, 1997, p. 12). This was unfortunate. From an ecological management viewpoint, SoERs prepared on a bioregional or catchment basis would make far more sense than unconnected SoERs of varying quality based on arbitrary boundaries.

The law-makers did not dismiss regional dimensions of SoERs altogether. In introducing the 1997 amendments, Minister Page promised that regional reporting would 'be encouraged where environmental issues are best addressed at that level' (NSW Legislative Assembly, *Hansard*, 17 September 1997, p. 162). Former clause 39(1) LGGR required a council to include in its SoER 'information relating to the general region' if analysis of any of the factors listed under former section 428(2)(c) 'cannot be met' solely by reference to the local municipal area. A council was then to observe all the statutory requirements for SoER reporting, such as adopting the 'pressure-state-response' model in the 'regional' part of its SoER. There was no statutory requirement, nor even a suggestion in the DLG's guidelines, for a uniform approach to regional information. Although the provisions were well intentioned, they lacked clarity. As for WSROC's regional SoER, Parissi (2003) reinforced the need for firmer structural underpinning. This should lie in the hands of the joint councils rather than further up the chain.

While numerous regional SoERs have been prepared by metropolitan local government alliances, the situation in rural and remote NSW paints a very different picture. In the broader context of natural resource management based on empirical research of council members and staff, Pini et al. (2007) pointed to various dilemmas such as stretched monetary resources, overworked employees and a resentment of state government. While various drawbacks are difficult to resolve, a combination of increased and durable funding with reasonable accountable mechanisms, together with closer proximity to an involved community, can only improve the situation.

The regional aspect of environmental management was clearly disregarded in the Management Plan framework. One small exception is found in the former

required 'particulars' for matters prescribed by the LGGR, which demanded Management Plans to include certain information on 'any proposed council activity relating to the management' of 'stormwater', 'coasts and estuaries', 'sewage' and 'waste' (former cl 28). Details were required on 'the relevant characteristics of the area, catchment or region' as well as council membership on relevant bodies and 'any action to be taken jointly with other councils or bodies' (former cl 28(2)(a), (c)-(d)). These provisions may have encouraged councils to at least turn their minds to opportunities for cooperative action, not only with their neighbours but also with other bodies such as catchment management authorities and the National Parks and Wildlife Service. This was a rare statutory example of pushing councils, as described by Smith, into 'creat[ing] networks... with other agencies' and attempting to 'persuad[e] other agencies to achieve prescribed ends' (1998, p. 265). But the statutory nudge related only to a discrete component of the environment. It did not extend to non-coastal environments unless affected by stormwater discharge and the like. Even within their narrow ambit, these clauses hardly enjoyed a high profile, tucked away in subordinate legislation. This provides one of many examples of not only the peculiarity of the statutory regime. But the thrust of regional approaches was to expand further under the third and current phase.

### **SoERs: Phase Three – Modernity and Flexibility**

The LGA 1993 underwent substantial change upon commencement of the *Local Government Amendment (Planning and Reporting) Act 2009* (NSW). Overall, the provisions are far less complex than in the earlier phases. The Management Plan obligation was totally rewritten and replaced by a series of mechanisms headed by the 10-year 'Community Strategic Plan' (CSP), described by the DLG in an early discussion paper as 'a plan for the community rather than just the council' (2006, p. 11). Unlike the former Management Plan, the SoER was retained but reclothed with far fewer garments.

According to the newly structured Division of Local Government under the Department of Premier and Cabinet (DivLG), the CSP presents 'the highest level plan that a council will prepare' (2010, p. 7). Its central purpose is to identify the 'main priorities and inspirations for the future of the local government covering a period of 10 years' (s. 402(1) while containing 'strategic objectives together with strategies for achieving these objectives' (s. 402(2)). Amongst other things, the CSP must address 'civic leadership, social, environmental and economic issues in an integrated manner' (s. 402(3)). This represents a clear statutory example of the 'quadruple bottom line' approach. Accordingly to Kelly and Crinnion (forthcoming), the 'emphasis is on an integrative balance rather than placing any

certain principle at the pinnacle'. Rather than being fixed to a complex array of specific or vague matters, the CSP will depend on councils using imagination and creativity whilst remaining realistic.

Several further observations may be made. Firstly, the CSP is to apply to a period of at least 10 years or more with an opportunity for change after each election (ss. 402(1), (5)). Secondly, the draft CSP must be subject to public input (s. 402(6)) and placed on the council's website shortly after its approval (s. 402(7)). Thirdly, the CSP is not subject to Ministerial approval, thereby making it a 'council owned' document. Finally, the LGGR contains no reference to the CSP at all. Instead, the DivLG has produced guidelines to assist councils in designing their CSPs in response to section 406 (DivLG, 2010). Importantly, the first 'essential element' for the CSP refers to 'a partnership between council, state agencies, community groups' that will embrace 'a broad range of issues to the whole community' (2010, p. 9, item 1.1). This demonstrates the desired 'integrated manner' referred to earlier. For example, the CSP might detail the proposed conversion of a rubbish dump into active open space where it will be consulting with the NSW Department of Environment, Climate Change and Water (DECCW) in addition to a local community committee and the broader citizenry.

What is perhaps even more fascinating from a legal perspective is that the Director-General must not only set up such 'integrated planning and reporting guidelines' but that councils *must* follow these guidelines in designing and reviewing their CSPs (s 406(1)-(2)). As a result, the guidelines are powerful instruments. While their language is far more straightforward than the former provisions, they appear to be a hybrid form of 'quasi-law' that can be easily altered.

A further factor is that the CSP does not stand alone. There is a new under-hierarchy of strategies (see DivLG, 2010; Kelly and Crinnion, forthcoming), comprising:

- 'Resource Strategies' (which need not be placed on public exhibition) (s. 403);
- Delivery Programs (s. 404); and
- Operational Plans (s. 405).

This cataract of 'plans' may appear complicated, especially to the layperson. Proof of their success relies in the implementation pudding. Conversely, they reflect a council's structural workings of a council with a boost for greater public accountability.

Crucially, the new regime has retained the SoER. The DLG's discussion paper of 2006 raised three options, two of which supported its preservation. The first two options were also loyal to maintaining the Management Plan. It was the third option which put forward a vastly revised structure, including the CSP, the Delivery Program and Operational Plan. But there was no requirement at all for preparation of a SoER. The paper stated that SoER 'reporting would not be prescribed, though councils would be expected to develop adequate monitoring and reporting frameworks, in consultation with the CMA' (presumably the local Catchment Management Authority) (DLG, 2006, p 12). The lack of survival of the separate SoER was also backed by consultancy papers prepared for the NSW Local Government and Shires associations (Centre for Local Government, University of Technology Sydney, Gibbs Consulting Pty Ltd and P&A Walsh Consulting Pty Ltd, 2009a and 2009b). This begs the question: how did the SoER survive through the legislative change?

The items under the Local Government Amendment (Planning and Reporting) Bill 2009 were not altered at all by the Parliament. References to the SoER in the parliamentary debates were minimal. The decision to retain the SoER appears to be the result of pressure from the DECCW, devoted officers and councillors, and various environmental groups. The current statutory provision is far less complex (see LGA 1993 s 428A). The four-yearly SoER must be prepared within the Annual Report (perhaps as a separate document) 'in the year in which an ordinary election of councils is to be held' (s 428(1)). Unlike the shemuzzle of questions during phase one and the array of overlapping sectors during phase two, phase three largely leaves the responsibility to each council to frame its SoER as it seems fit. It must, however, establish 'environmental objectives' flowing from the CSU. In addition, it is obliged to:

- ascertain 'relevant environmental indicators for each environmental objective';
- provide information on each environmental indicator
- detect 'major environmental impacts' in relation to the environmental objectives (s. 428A(3)).

The latter might, for example, refer to approved projects under the planning legislation such as coal mines or recent bushfires that have decimated parts of a national park within a council's area. Such information should reveal the extent of coordination, if any, between the council and agencies of the State Government.

There is now specific statutory reference to regional SoERs. Section 428A(4) refers to catchment management area as an example. Unlike the previous phases,

it now openly recognises wider-scale SoERs driven by ROCs and other council alliances. Such 'plans' are scarcely new as demonstrated by Parissi's study of western Sydney (2003). Regional SoERs will be more difficult in remote areas where council headquarters are further apart, adding to the costs of meetings and travel for councillors and staff. There is also the issue that the political purview may be limited to infrastructural maintenance and economic development. At the same time, Pini (2009) refers to 'fundamental shifts' towards regional environmental management. But the focus must be on what the regional group aims to achieve in line with the compendium of CSPs.

A further provision of interest is section 428A(2), which states that the SoER 'must be prepared in accordance with the guidelines' under section 406, thereby raising again the concept of 'quasi-law'. But the relevant item is hardly onerous, stating that the SoER document – whether within or adjacent to the Annual Report – must relate to 'the objectives for the environment established by the' CSP (DivLG, 2010, p. 23). It merely seeks to ensure integration between the SoER and the CSP. As a result, the newly framed law is extremely elastic. As emphasised by the Minister during the second reading speech for the recent changes, 'flexibility' was essential (NSW Legislative Assembly, *Hansard*, Mrs B Perry, 25 June 2009, p. 16830).

Notably, neither the legislation nor the guidelines provide a system for public consultation. This may have its benefits. The SoER will preferably be constructed with input from local community environmental groups such as members of local Bushcare or Dunecare teams. It can then feed into the CSP, the delivery program and the operational plan, all of which must be placed on public exhibition with community feedback. This leaves the SoER as a more technical document from which councils can draw their policy priorities. Should disappointing outcomes arise in the CSU etc., members of the community can still raise their concerns. In any case, the SoER may still be placed on exhibition should the council see this as warranted. Such options exemplify the flexibility of the system.

The question remains as to whether the SoER should have been integrated more closely within the CSP under section 402 LGA 1993, similar to the 'community engagement strategy' (see s 402(4)). This was the original idea. The advantage here would have been that all plans and strategies would have been together in the one place. This would have provided a more straightforward approach. Alternatively, the separation of SoERs under section 428A makes environment factors more prominent. It demonstrates that the SoER has withstood time. Moreover, the provision leaves each council – or any group of councils – to prepare their own document with minor statutory interference from state



government. Again, it provides a good example of the subsidiarity principle. The success or otherwise of this new species of SoERs should be reviewed after an appropriate period of time. Before then, it is argued that section 428A should remain.

## **Conclusion**

Whilst councils at least recognise the statutory obligation to prepare SoERs, this does not necessarily translate into utilising them as effective environmental management tools. It is up to each council to appreciate its benefits. An invaluable contribution SoERs may make is to alert councils to the need for appropriate policy responses to existing or foreseeable environmental problems. For example, a SoER might reveal a particular area to be more ecologically significant than previously believed. The council might then, for instance, choose to use the information to support a change to the local environment. Or it might decide to negotiate with landholders to encourage active environmental management. Alternatively, it may decide to carry out environmental protection works itself. Clearly, SoERs can do far more than provide interesting data. But the problems of restricted financial resources and parochialism may remain. Local government must assume the role of leadership while seeking bottom-up approaches. The new CSP and revised SoER should be regarded as tools rather than impediments. Even if they are followed begrudgingly, the usage of local and regional expertise can lead to improved urban and rural environments. As local government sits at the environmental coalface, planning ahead is critical.

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